IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION No.15679 of 2007

Between:
Patibandla Ramakrishna

….. PETITIONER

AND
Government of A.P., rep.by its
Principal Secretary, Municipal Administration,
Secretariat, Hyderabad and 3 others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.15679 of 2007

ORDER:

This writ petition is filed by the petitioner, seeking Writ of Mandamus, declaring the proceedings in ROC No.2134/2007/P2, dated 18.07.2007 issued by the 4th respondent, as being illegal, arbitrary, contrary to the principles of natural justice, violative of Article 14 of the Constitution of India and violative of provisions of Section 16 of A.P.Municipalities Act, 1965.

2. This writ petition is filed by one P.Venkat Rao, who is stated to be the paternal uncle of the writ petitioner, as the writ petitioner is lodged in Sub-Jail, Tenali. It is stated that the petitioner was elected as Municipal Councilor in the elections that were conducted by the State Election Commission for the Municipalities in the State of Andhra Pradesh, in the year 2005, in respect of 15th Ward of Tenali Municipality of Guntur District. It is also stated that he is the Floor Leader of the opposition party in the said Municipal Council.

3. It is stated that majority of the elected members of the Council belongs to the Ruling Party i.e. Indian National Congress. While so, a criminal case was registered in Cr.No.40/2007 in Tenali I-Town Police Station, for the offence under Sec.302 IPC read with some other provisions, falsely implicating him, showing as Accused No.3, therefore, he was arrested and remanded to judicial custody on 07.05.2007, and he is still continuing in the custody.

4. It is stated that by virtue of the provisions of Andhra Pradesh Municipalities Act, 1965 (hereinafter referred to as 'the Act'), especially Section 16 provides for disqualification of elected members of the

Council. It is stated that under Sec.16(1)(k) if a member absents himself from the meeting of the Council for a period of three consecutive months, reckoned from the date of the commencement of his term of office, or of the last meeting which he attended or if his restoration to office as member under Sub-Section (3) or as the case may be, he will acquire disqualification. Under the proviso no meeting from which a member absented himself shall be counted against him under this clause, if notice of that meeting was not duly served on him. Therefore, it is stated that unless and until a notice of the meeting of the Council is properly served and if a Councilor fails to attend on three consecutive meetings, then only the disqualification occurs. It is stated that the notice dated 07.05.2007 for the meeting held on 11.05.2007 was not served on the petitioner. However, under the impugned order, it was alleged that notice was served by affixture on the house of the petitioner, which is factually incorrect.

5. It is stated that similar notice dated 07.06.2007 for the second meeting which was held on 11.06.2007 also was not served on the petitioner, but it is alleged that the impugned notice of the meeting was served on the brother-in-law of the petitioner, namely Sri B.Jitendra. It is stated that the said Jiytendra is a final year student of Polytechnic Course studying at Bapatla, who is attending the college from Tenali by residing in a private hostel at Tenali. It is stated that the notice alleged to have been served on the said Sri Jitendra for the reasons best known to the 4th respondent and the said Sri Jitendra never informed the petitioner or his family members about the said service of notice or the meeting of the Council. It is further stated that when the petitioner was brought to the Judicial First Class Magistrate's Court for adjournment on 11.06.2007, the petitioner came to know of the ordinary meeting of the Council of the Municipality on that date, through his well wishers present

in the Court, and therefore, he submitted a petition before the learned Magistrate, seeking permission to attend the meeting with the escort, and the same was adjourned without passing any orders. It is further stated that even subsequently also, no order was passed until 13.07.2007 when it was rejected before the date of third meeting, which was scheduled on 16.07.2007.

6. It is stated that the provisions of the Act contemplates due service of notice. Therefore, the respondents ought to have attempted to serve the notice on the petitioner personally. Since no such attempt was made, the service of notice could not be considered as proper service, as is contemplated under the provisions of the Act. It is further stated that though the petitioner tried to attend the meeting by seeking leave of the Court, but he was not permitted by the Court. Therefore, he was prevented from attending the meeting of the Council, therefore, the disqualification cannot be said to have incurred by the petitioner, in view of the peculiar circumstances. Therefore, the petitioner sought for quashing of the said proceedings.

7. A counter is filed on behalf of the 4th respondent, disputing and denying the claims that are made by the petitioner. In the counter filed on behalf of the 4th respondent, it was specifically stated that the notices are sought to be served on the petitioner at his residence, but neither the petitioner nor any of his family members are available, therefore, notices were served by affixture at petitioner's house, with reference to the first meeting, which was an urgent Council meeting that was called for on 20.04.2007 and with reference to the ordinary meeting dated 11.05.2007. Similarly, with reference to the second ordinary meeting, as the petitioner was not available, notice dated 07.06.2007, fixing the date of meeting on 11.06.2007 was served on the brother-in-law of the petitioner, who was available at the address of the petitioner. It is stated that even on earlier occasion also, in the month of January, 2006, similar

notice of the Council meeting was served on the brother-in-law of the petitioner and the petitioner attended for the meeting, held on 31.01.2006, in pursuance of the said notice. Similarly, with reference to the third meeting, the notice dated 12.07.2007 was, in fact, served on the petitioner personally in the Jail on 12.07.2007, as per the request of the petitioner. On all three occasions of ordinary Council meeting, the petitioner failed to attend, therefore, in terms of Sec.16(1)(k) of the Act, the petitioner incurred disqualification, therefore, the 4th respondent communicated the said fact to the petitioner as there is a provision under Sub-Sec.(3) of Sec.16 of the Act to approach the Council for restoration of his membership. But, the petitioner, instead of making appropriate application, as is provided under the statute, has come up with the present writ petition, disputing and denying the service of notices that are served on the petitioner, either by affixture or on the members of the family as well as even on the petitioner, while he was in the jail, therefore, the 4th respondent stated that there are no merits, warranting interference, and in fact, intimation given under the impugned proceedings is only a communication to the petitioner to avail the remedy that is available under the provisions of the Act to get his membership restored. Since the petitioner was having an effective remedy under the provisions of the Act itself, the writ petition is liable to be dismissed.

8. To the same effect, is the counter, filed on behalf of the 3rd respondent.

9. Sri P.Venugopal, appearing for the petitioner, contended that the respondents did not serve the notices on the petitioner, as is contemplated under law, therefore, the petitioner did not suffer for any disqualification, in terms of the proviso to Sec.16(1) of the Act. Alternatively, the learned counsel contended that in view of the peculiar

situation and the facts of the case, since the petitioner was prevented from attending the Council meeting as he was falsely implicated in a criminal case and detained in the police custody, therefore, the absence, if any, would not voluntary, but due to the peculiar circumstances, where he was prevented. Therefore, his absence could not be counted as an intentional absence, so as to incur the disability of disqualification. The learned counsel also contended that the petitioner was democratically elected as Member of the Council, therefore, he should not be disqualified during the tenure for which he was properly elected.

10. The learned counsel relied upon a judgment of the Delhi High Court in ***V.P.Singh v. Chairman, Metropolitan Council***[1] where the Bench of the Delhi High Court, while considering the provisions of Sec.18(3) of Delhi Administration Act, with reference to the similar disqualification, held that the absence of a member from the meetings of the Council without permission for a period of six successive months, has to be computed from the date of the meeting from which a member was absent and not from the date on which he last attended the meeting. Holding so, when there was a proposed motion for declaration of cessation of membership of Council in the meeting of the Council, the Court passed orders, restraining the Council from moving the said motion. At the same time, the Delhi High Court also observed that the Court will not generally interfere in matters, strictly relating to indoor management and conduct of business. But, however, the Court will interfere when it acts against the mandatory provisions of the statute. Therefore, sought for setting aside the impugned proceedings of the 4th respondent.

11. The learned counsel for the respondents, on the other hand, sought to sustain the impugned order. It is contended that absence of the petitioner was computed with reference to the meetings, specifically

where notices were served and not with reference to the period as was computed in ***V.P.Singh's*** case. Here, admittedly, notices were served as is provided under the provisions of the Act. In spite of it, the petitioner did not attend the Council meeting, therefore, he suffered the disqualification. The learned counsel also contended that in the present statute, there is no provision, which can absolve the absence, if there are any circumstances, which prevents the member of the Council from attending the meeting. In the absence of any specific provision exonerating a member of the Council from attending the meeting in any of the peculiar circumstances, the plea of the petitioner that he was not able to attend the meeting is clearly devoid of merit. Therefore, sought for dismissal of the writ petition.

12. It is further stated that though the petitioner suffered disqualification by virtue of his absence for three consecutive meetings of the Council, but still there is a remedy provided under the provisions of Sec.16(3) of the Act where the petitioner may move the Council for restoration of his membership. But the petitioner, instead of moving the Council for restoration of his membership, has rushed to this Court by filing this writ petition. Since there is no statutory violations or even the violations of the principles of natural justice, the petitioner is not entitled to any relief, hence, sought for dismissal of the writ petition.

13. Heard on either side and considered the material on record.

14. The only issue to be considered in this writ petition is whether the petitioner had suffered disqualification by virtue of his consecutive absence for three consecutive meetings of the Council, as is provided under Sec.16(1)(k) of the Act, and whether the notices, as is contemplated under Sec.353, were properly served or not.

15. It is not in dispute that the petitioner was one of the elected member of Tenali Municipal Council. It is also not in dispute that the Council had its meetings on various dates specified. There was an

urgent Council meeting held on 20.04.2007 and thereafter there were three ordinary Council meetings held on 11.05.2007, 11.06.2007 and 16.07.2007. With reference to those meetings, the grievance of the petitioner is that notices were not served, as is contemplated under law. But, the stand of the respondents is that notices are sought to be served on the petitioner at his address. As neither the petitioner nor any of his family members were available, notice was served by affixture, as is contemplated under Sec.353(1)(d) of the Act. With reference to the notice dated 07.05.2007 for convening the meeting on 11.05.2007, as the petitioner or any of his family members are not available at the house, the same was served by affixture. With reference to the second meeting notice dated 07.06.2007, convening the meeting on 11.06.2007, it is stated to have been served on the brother-in-law of the petitioner by name Sri B.Jitendra on 07.06.2007 itself. It is alleged by the petitioner that the said Sri B.Jitendra was only residing in the hostel being a student of Polytechnic. The explanation of the respondent is that even on earlier occasion also, similar notice was served in the month of January, 2006 on the said Sri B.Jitendra, and in pursuance of the said notice, the petitioner attended the meeting on 31.01.2006. Since the said Sri B.Jitendra was available at the address of the petitioner, the notice was served. With reference to the third meeting notice dated 12.07.2007 convening the meeting on 16.07.2007, the notice was served on the petitioner through the Superintendent of Sub-Jail, Tenali on 12.07.2007 itself, as per his representation dated 15.06.2007. But, however, his case is that though he sought permission from the Magistrate's Court, but he was not permitted to attend the meeting of the Council, therefore, he was not able to attend the meeting. Therefore, it is contended by the learned counsel that the notices as allegedly served on the petitioner by affixture or other modes, as is stated, are not sufficient service of notices, therefore, the disqualification alleged

incurred, is not proper and just.

16. The learned counsel also alternatively contended that the petitioner was prevented from attending the Council meeting, by virtue of his detention in Jail, therefore, his absence could not be considered as intentional. But, from the averments made in the counter, it is clear that the service of notices were stated to have been followed in accordance with the provisions of the Act. It is not the case of the petitioner that he had given any other address for service of notice. Notices were served as have been served earlier, and further with reference to the Council meeting dated 16.07.2007, in view of his representation notice was served through the Superintendent of Sub-Jail, Tenali on him at the Jail. In view of service of notices, as is stated above, the claim of the petitioner that notices were not served properly, is clearly devoid of merit, and in fact, service by affixture is one of the modes provided under Sec.353(1) of the Act.

17. With reference to the petitioner's claim that he was prevented from attending the meeting by virtue of his detention in jail and his absence was not voluntary, the same could not be taken as his absence for disqualifying the petitioner. But, a perusal of the provision does not show that the absence must be intentional. What is contemplated under the provisions of the Act is that if a Councilor absented consecutively in three meetings of the Council, he would incur disqualification. Admittedly, the petitioner did not attend the Council meeting for three consecutive meetings of the Council, therefore, he incurs disqualification, as is contemplated under the provisions of the Act.

18. Though the learned counsel for the petitioner relied upon the judgment of the Delhi High Court in ***V.P.Singh's*** case, the facts of that case are totally different and the said judgment was rendered while interpreting the provisions of Sec.18(3) of Delhi Administration Act, therefore, the said judgment is not of any assistance to the petitioner.

19. Though the petitioner was declared as disqualified for his absence from attending three consecutive meetings of the Council, but, however Sub-Sec.(3) of Sec.16 provides a remedy for him to get his membership restored. The said Sec.16(3) of the Act reads thus:

> "Where a person ceases to be a member under clause (k) of sub-section (1), the [Commissioner] shall at once intimate the fact in writing to such person and report the same to the council at its next meeting. If such person applies for restoration to the council on or before the date of its next meeting or within fifteen days of the receipt by him of such intimation; the council may, at the meeting next after the receipt of such application, or *suo motu* restore him to the office of member;
>
> Provided that a member shall not be so restored more than thrice during his term of office."

20. A perusal of the above provision clearly shows that a person who ceased to be a member of a Council on receiving the intimation from the Commissioner of the Municipality, may apply to the Council for restoration of his membership, but the petitioner without resorting to the said provision, where he could get the relief of restoration of his membership, has come up with the present writ petition, assailing the communication on different grounds. Since the grounds raised assailing the impugned proceedings are not sustainable, the petitioner is not entitled to any relief from this Court.

21. Under the above circumstances, the Writ Petition is dismissed as devoid of merit. No order as to costs.

S.ANANDA REDDY,J

Dated: 21.09.2007
Dsr

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[1] AIR 1969 DELHI 295 (V 56 C 50)